

# **KGORONG AGRICULTURAL PRIMARY COOPERATIVE (KAPC)** **LIMITED**

## **CONSTITUTION**

### **PART 1 - ABOUT THE CO-OPERATIVE**

#### **1. NAME**

- 1.1. The name of the Co-operative is **KGORONG AGRICULTURAL CO-OPERATIVE LIMITED**.
- 1.2. The abbreviated name is **KGORONG AGRI**

#### **2. FORM OF CO-OPERATIVE**

- 2.1. This is the constitution of a business undertaking formed as a **Primary** Co-operative with limited liability in terms of the provisions of the Co-operatives Act, 2005 (Act 14 of 2005).

#### **3. DEFINITIONS**

- 3.1. In this constitution, unless the context indicates otherwise, a word or expression to which a meaning is attached in the Co-operatives Act, 2005 shall have a similar meaning and –

"Co-operative" means **KGORONG AGRICULTURAL PRIMARY COOPERATIVE LIMITED** that is incorporated in terms of the Act;

"entrance fee" means a once-off fee payable to obtain Membership of the Co-operative, and is paid on application for Membership;

"gender"	a reference in this constitution to the masculine gender shall also include the feminine gender and vice versa;
"Membership fee/ subscription fee"	means an annual fee payable towards the running of the Co-operative, and may be paid off in equal monthly instalments;
"member loan"	means a loan made by a member to a Co-operative in terms of <a href="#">clause 43</a> .
"patronage proportion"	means the proportion which the value of the transactions conducted by a member with a Co-operative during a specified period bears to the value of the transactions conducted by all the Members during the same period with or through the Co-operative.
"the Act"	means the Co-operatives Act, 2005 (Act 14 of 2005).

#### **4. PLACE(S) OF BUSINESS**

- 4.1. The main place of business of the Co-operative is situated at Plot [129 Bashewa, Garsfontein Road, Pretoria](#).

#### **5. OBJECTIVES, BUSINESS DESCRIPTION & RESTRICTIONS THERETO**

- 5.1. The Objectives of the Co-operative are as follows—
- (a) [to undertake production and marketing of agricultural products;](#)
  - (b) [to acquire, or to acquire control over, any agricultural product or anything derived from an agricultural product and to dispose of it;](#)
  - (c) [to process the agricultural products or to manufacture any article therefrom and to dispose of the product or thing into which it was processed or articles so manufactured;](#)
  - (d) [to hire, buy or otherwise acquire and to let, sell or otherwise supply requisites, necessary or used for or in connection with farming operations;](#)

- (e) to hire, buy or otherwise acquire, or produce or manufacture and to let, sell or otherwise supply any article of consumption;
- (f) to hire, establish, or erect and to use or make available for use facilities necessary for or useful in connection with farming operations;
- (g) to render services, necessary for or useful in connection with farming operations;
- (h) to render any other services, including services relating to the buying, selling and leasing of immovable agricultural property;
- (i) to undertake insurance business which relates to farming risks to farmers.
- (j) To provide services, where applicable and deemed necessary, to Secure funding facilities for itself, its Members and Members' companies,
- (k) Create a common brand for all its Members and/or Members' companies.

## **6. DESCRIPTION OF BUSINESS AND ANY RESTRICTIONS ON BUSINESS**

The business is restricted to the above-mentioned Objectives and Business Description.

## **PART 2 – MEMBERSHIP**

### **7. PRINCIPLES**

- 7.1. **Voluntary and open Membership** - the Co-operative is a voluntary organisations open to all persons able to use their services and willing to accept the responsibilities of Membership, without gender, social, racial, political or religious discrimination. The Board, may from time-to-time restrict persons eligible for Membership.
- 7.2. **Democratic member control** – the Co-operative is controlled by the Members.
- 7.3. **Member economic participation** – Members contribute equitable to, and democratically control the capital of the Co-operative. Members provide capital and are part of decision making.
- 7.4. **Autonomy and independence** – collectively, Members of the Co-operative work together and help each other to achieve their goals.
- 7.5. **Education, training and information** – Members of the Co-operative continuously develop themselves and learn from each other.
- 7.6. **Co-operating among Co-operatives** – Members of the Co-operative continuously look for opportunities to co-operate with others.
- 7.7. **Concern for community** – Members of the Co-operative continuously promote sustainable development of their communities.

### **8. REQUIREMENTS FOR MEMBERSHIP AND RESTRICTIONS TO MEMBERSHIP**

- (a) Requirements: Any natural person, who is over the age of 18 years, or any juristic person, who takes interest in agriculture and connected matters, may on application to the Board, become a member of the Co-operative.

- (b) Restrictions: The Board may limit the maximum number of Members, as long as the Co-operative does not have less than 5 Members. A person applying for Membership may not be a member of farmer Co-operatives.

## **9. APPLICATION FOR MEMBERSHIP**

- 9.1. Application for Membership shall be made on the form provided for that purpose, and shall be accompanied by the entrance fee.
- 9.2. The Board must consider every application for Membership and has the right to accept or reject an application.
- 9.3. The Board must, within sixty (60) days after receipt of an application for Membership, notify the applicant of its decision.
- 9.4. A person becomes a member of the Co-operative when his application for Membership has been accepted by the Board.

## **10. ENTRANCE FEE AND MEMBERSHIP FEE / SUBSCRIPTION FEE**

- 10.1. An Entrance Fee of **an amount determined by the Board on annual basis** must be paid on application for Membership. Such fee is not refunded on termination of Membership.
- 10.2. A Membership Fee / Subscription fee of **an amount determined by the Board on annual basis** must be paid annually.
- 10.3. Members may elect to pay Membership/subscription fee on an annual lump sum payment or in equal monthly instalments.
- 10.4. Membership Fee / Subscription fee shall not be refunded on termination of Membership.

## **11. RIGHTS AND OBLIGATIONS OF MEMBERS**

### **11.1. Members Rights:**

- (a) Members have the right to do business with or through the Co-operative provided that it is not in conflict with the objectives of the Co-operative and it is approved by special resolution by the Members;
- (b) Members have the right to ratify the appointment an auditor;
- (c) During ballots at meetings of Members, each member has the right to one vote;
- (d) Members that are not suspended or expelled from the Co-operative, have the right to attend meetings of the Co-operative.
- (e) Members have the right to access to information and may examine the records of the Co-operative during normal office hours and may make copies after payment of a fee;
- (f) Members are entitled to a certificate in respect of shares issued to such member if the constitution of the Co-operative allows for shares to be issued and member loans made by that member;
- (g) Members, as owners of the Co-operative, are part of the decision making in the Co-operative through general meetings or special and ordinary resolutions; and
- (h) Members have the right to withdraw from being a member of the Co-operative at any point of time.

### **11.2. Obligations of Members:**

- (a) Members must adhere to this constitution and any amendments thereto, as well as any by-laws made by the Board.
- (b) Members must participate in the business of the Co-operative, unless circumstances outside of the control of the member prevents the member from doing so.
- (c) Members must notify the Co-operative whenever any of their personal details change, example when their home address changes.
- (d) Members must attend the quarterly meetings of the Co-operative.
- (e) Members must pay their subscription fees.
- (f) Members should abide by the rules of the Co-operative as stipulated in its constitution and act in accordance to the Co-operative values and principles.

- (g) Members should always act in the best interest of the Co-operative and should ensure that all policies and performances are in accordance with the stated aims and objectives of the Co-operative.

## **12. LIABILITY OF MEMBERS**

- 12.1. The liability of a member is limited to an amount equal to the entrance and Membership fees in the Co-operative held by him in so far as that amount has not been fully paid up.

## **13. TRANSFER OF MEMBERSHIP**

- 13.1. Membership may be transferred only in accordance with [clause 14](#).
- 13.2. The transfer of any Membership shall be in writing in such form and signed in such manner as the Board from time to time may stipulate.
- 13.3. When such transfer has taken place the Board shall issue to the transferee a Membership card/ certificate.

## **14. CONDITIONS AND PROCESSES FOR TERMINATION OF MEMBERSHIP**

- 14.1. Termination on death

- (a) The Membership of a member who has died may in terms of this clause be transferred to a member of that deceased member's family or another person appointed by the executor of the deceased member's estate subject to the approval by the Board of the proposed transferee. In the event of such transfer not taking place, the Membership of the deceased member shall be terminated by resolution of the Board.
- (b) Upon such termination, the Membership fees concerned are forfeited and the amount paid in respect thereof is credited to the general reserve of the Co-operative.

- (c) The Co-operative shall repay the Membership shares, where applicable, to the member's estate/family of the deceased member within a period of 2 years.
- (d) In the event that the Co-operative determines that the repayment of a member's Membership shares upon the withdrawal of that member's Membership, would adversely affect its financial well-being, the Co-operative may, subject to other legislation and its constitution, defer such payment for a period not exceeding two years.
- (e) Unless the Co-operative determines otherwise, the withdrawal of a member from the Co-operative does not release the member from any debt or obligation to the Co-operative or any contract between the member and the Co-operative.

#### 14.2. Termination when a member is non-active

- (a) Whenever a member fails to renew annual subscription, or fails to attend three (3) consecutive scheduled meetings of the Co-operative for no valid reason or has neglected to notify the Co-operative of any change in his address, whereby the Co-operative is prevented from contacting him, his Membership may be terminated by resolution of the Board.
- (b) Upon such termination, the Membership fees of the member concerned are forfeited to the Co-operative and the amount thereof is credited to the general reserve of the Co-operative.
- (c) Unless the Co-operative determines otherwise, the withdrawal of a member from the Co-operative does not release the member from any debt or obligation to the Co-operative or any contract between the member and the Co-operative.

#### 14.3. Withdrawal of Membership

- (a) The resignation of a member comes into operation at the first meeting of the Board held after the Co-operative has received the written resignation of the member.
- (b) A member opting to withdraw by resignation is required to give notice of at least thirty (30) days.

- (c) The Membership of a member who has resigned, shall be terminated by resolution of the Board. The amount paid in respect of Membership fees shall be forfeited to the Co-operatives and credited to the general reserve.
- (d) The Co-operative shall maintain a register of all Members, including those who have resigned. Such a register may be made available, subject to the Board's determination, to relevant authorities, with interest on Co-operatives and related matters.
- (e) Any amount payable by the Co-operative in terms of [clauses 14.2 and 14.3](#) shall be set off against any debt for the payment of which the member or his estate is liable.
- (f) Unless the Co-operative determines otherwise, the withdrawal of a member from the Co-operative does not release the member from any debt or obligation to the Co-operative or any contract between the member and the Co-operative.

## **15.CONDITIONS AND PROCESS FOR SUSPENSION AND EXPULSION**

- 15.1. A member who repeatedly contravenes a provision of this constitution and who refuses to comply with such provision or to meet an obligation imposed on him by the Act or in terms of this constitution or which he agreed to meet, may—
  - (a) by resolution of the Board, be suspended as a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting;
  - (b) by special resolution be suspended as a member for a period not longer than 12 (twelve) months from the date on which he is suspended;
  - (c) by special resolution be expelled from the Co-operative.
- 15.2. The suspension of a member may be revoked by resolution of the Board at any time.
- 15.3. Before a member can be suspended or expelled in terms of [clause 15](#), he has to be given prior written notice of the intention of the Board.
- 15.4. The notice to such member must contain the following particulars—
  - (a) the reasons for the proposed suspension or expulsion; and

- (b) a time when, and place where the member may appear in person, with or without witnesses, before the Board or to which he may send a written statement signed by himself setting out his objections to the proposed suspension or expulsion.

- 15.5. The Board must notify him in writing if it is decided to suspend or expel a member, of—
- (a) the date on which his suspension or expulsion comes into effect;
  - (b) period of time during which the suspension will apply; and
  - (c) disciplinary measures which will be taken.

## **16. DISCIPLINARY MEASURES**

- 16.1. While under suspension a member forfeits his right to attend general meetings or to vote thereat by proxy.
- 16.2. The Members by special resolution or the Board may furthermore stipulate that certain or all transactions with a member must be suspended for the period of his suspension.
- 16.3. The Membership of an expelled member must be terminated by resolution of the Board and upon such termination the member forfeits his Membership fees and the amount paid in respect thereof must be credited to the general reserve.

## **17. ASSOCIATE MEMBERSHIP**

- 17.1. The Co-operative, at the sole discretion of Members, may consider applications for Associate Membership. Such Membership shall be temporary in nature and, unless specified otherwise, shall not exceed a period of 12 months. Such Membership shall be for advancing the objectives of the Co-operative as may be determined from time-to-time.
- 17.2. Associate Membership shall be renewed, if the Board finds the need for such Membership to continue beyond the period provided for by [clause 17.1](#).
- 17.3. Associate Membership shall not qualify associate Members for full Membership at expiry of associate Membership period.

- 17.4. Associate Members may, at the Board's determination, enjoy some benefits from the Co-operative.
- 17.5. Associate Members do not have voting rights.
- 17.6. Associate Members, without prejudice to the Members and/or the Co-operative ,may apply for full Membership at any time.
- 17.7. The Co-operative shall maintain a register of all Associate Members, including those who have been converted to full Members. Such a register may be made available, subject to the Board's determination, to relevant authorities, with interest on Co-operatives and related matters

## **PART 3 - MANAGEMENT OF THE CO-OPERATIVE**

### **18. BOARD OF DIRECTORS**

- 18.1. The affairs of the Co-operative must be managed by a Board of Directors consisting of not less than five (5) Directors but not more than nine (9) Directors or as approved in line with [clause 18.3 below](#). The Directors must exercise the powers and perform the duties of the Co-operative.
- 18.2. The Board shall be representative of a good mix in terms of expertise, skills, gender and youth.
- 18.3. The number of Directors shall be subject to the approval of Members at the next general meeting, be determined by the Board from time to time. If, however, the Members do not approve the decision of the Board and a vacancy arises as a result thereof, such vacancy shall be regarded as a casual vacancy to be filled in terms of [clause 25](#).
- 18.4. Without prejudice to the provisions of [clauses 25](#) of this constitution, Directors shall be elected at the annual general meeting.

### **19. FUNCTIONS AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS**

- 19.1. The Board has to oversee and ensure the strategic decisions in pursuance of the objectives of the Co-operative as informed by the constitution of the Co-operative as well as leadership to maximize the benefits for the Co-operative.
- 19.2. The Board must exercise leadership, entrepreneurship, integrity and sound judgment in directing the affairs of the Co-operative.
- 19.3. The Board must also look after the interests of their Members needs whilst simultaneously remaining competitive in the market.
- 19.4. The Board must develop internal policies and plan to ensure the efficient and effective running of the Co-operative.
- 19.5. The Board must develop a risk plan and report on the risk plan at the annual general meeting to Members.
- 19.6. Policies or plans developed by the Board must be ratified and endorsed by Members at the annual general meeting.

- 19.7. The policies or plans to be developed by the Board include, but are not limited to the following:
- (a) Activity plan that summarises the operational and financial objectives of the Co-operative for the next financial year with clear business goals and how the funds of the Co-operative will be utilised;
  - (b) A framework for adequate internal control;
  - (c) Risk plan;
  - (d) Monitoring and review performance management plans;
  - (e) Financial statements or annual report as may be applicable
  - (f) Social and management decision reports.
- 19.8. The Board is responsible to ensure good governance and compliance to legislative requirements as well as the requirements stipulated in the constitution of the Co-operative.
- 19.9. The Board must ensure transparency in terms of management decisions; the financials of the Co-operative as well as accountability to the Members of the Co-operative.
- 19.10. The Board must provide Members with the information necessary to make sound judgements regarding the affairs of the Co-operative as well as their Membership to the Co-operative.
- 19.11. To ensure transparency and accountability the Board must establish effective communication mechanisms to ensure communication with Members, management as well as all relevant stakeholders.
- 19.12. The Board has a responsibility to increase the number of Members to the Co-operative and to ensure that Members actively participate in the operations and decision making within the Co-operative.
- 19.13. The Board must inform the registrar of the appointment of the auditor or independent reviewer, as may be applicable, within 30 days of the appointment of the auditor or independent reviewer.

## **20. POWERS AND RESTRICTIONS ON DIRECTORS**

### **20.1. Powers:**

- (a) The directors have the power to obtain Membership of a secondary Co-operative, which seeks to promote any matter in which the co-operative has an interest.

- (b) The directors have the power to open a bank account in the name of the Co-operative.
- (c) The directors have the power to suspend by resolution a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting.
- (d) The directors have the power to acquire or hire movable or immovable property on behalf of the Co-operative.

#### 20.2. Restrictions:

- (a) The directors have the power to overdraw a bank account or to make a loan on behalf of the Co-operative, provided that Members have agreed to this with a special resolution.
- (b) The directors shall not provide loans to directors, Members or any other person or organisation.
- (c) The director shall not make donations on behalf of the Co-operative to any person or organisation.

### **21. PERSONS NOT COMPETENT TO BE DIRECTOR**

#### 21.1. The following persons shall not be competent to hold the office of Director:

- (a) A person who is of unsound mind;
- (b) a person who is an unrehabilitated insolvent;
- (c) a person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury, or any offence involving dishonesty in connection with the formation or management of a Co-operative or other corporate entity;
- (d) a person who is a member of another entity that poses a conflict of interest to the business of the Co-operative.

### **22. TERM OF OFFICE**

#### 22.1. The term of office of the inaugural Board of the Co-operative shall be five (5) years, subject to review in three (3) years.

- 22.2. The term of office, save for the provision of [clause 22.1](#) above, shall be limited to three (3) years.
- 22.3. The Directors shall be eligible to serve in the Board for a maximum of two (2) consecutive terms.
- 22.4. The Directors to retire each year shall be those who have been longest in office since their last election at the annual general meeting, but as between Members who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by ballot.

## **23. NOMINATION OF DIRECTORS AND VOTING FOR DIRECTORS**

- 23.1. Candidates for the position of Director shall be nominated openly at the annual general meeting held for the purpose electing one or more Directors.
- 23.2. Without prejudice to the provisions of [clauses 25](#) a member, including a retiring Director, qualifies for election as Director only if he is nominated in terms of [sub-clause 23.1](#).
- 23.3. (a) If the number of candidates nominated does not exceed the number of vacancies on the Board to be filled such candidate or candidates shall be declared elected at the annual general meeting.
- (b) If the number of candidates nominated exceeds the number of vacancies on the Board, as many Directors as there are vacancies shall be elected from the nominees at the annual general meeting.
- If insufficient or no candidates are nominated to fill the vacancies on the Board, such vacancies shall be regarded as casual vacancies to be filled in accordance with [clause 25](#).

- 23.4. The method to be followed in electing Directors shall be as determined by the Chairperson of the meeting.
- 23.5. At the election of Directors, a member shall vote for as many candidates as there are vacancies to be filled on the Board and those candidates receiving the highest number of votes shall be declared elected.

## **24.REMUNERATION OF DIRECTORS**

- 24.1. Members, at their sole discretion, may determine remuneration for Directors in respect of time spent by Directors in executing the business of the Co-operative. Such remuneration, shall be reviewed on annual basis, or at a period determined by Members.
- 24.2. Directors shall be reimbursed costs incurred while executing the business of the Co-operative. Such costs may include travelling, accommodation and other permissible incidental expense, as may be determined by Members.

## **25.FILLING OF A VACANCY ON THE BOARD**

- 25.1. Any vacancy occurring on the Board during the year shall be filled until the next annual general meeting by a member appointed, by the remaining Directors, subject to the provisions of [clause 21](#).
- 25.2. At the said annual general meeting a member shall, subject to the provisions of this constitution, be elected to fill the vacancy.
- 25.3. Any Director elected at such annual general meeting shall not hold office for a period longer than the unexpired portion of the period of office of the Director whose office became vacant.

## **26.CONDITIONS FOR VACATION OF OFFICE**

26.1. A Director shall vacate his office—

- (a) If he becomes incompetent in terms of [clause 21](#) of this constitution to hold the office of Director; or
- (b) If he absents himself from more than three consecutive ordinary meetings of the Board without its leave; or
- (c) Upon the expiry of thirty (30) days, or such shorter period as may be approved by the Board, after he has resigned as a Director of the Co-operative.

## **27.CONDITIONS AND PROCESSES FOR THE APPOINTMENT OF THE CHAIRPERSON, VICE-CHAIRPERSON AND ACTING CHAIRPERSON OF THE BOARD**

27.1. At the first meeting of the Board held after the formation meeting and thereafter at the first meeting of the Board held after every annual general meeting of Members or when the necessity arises, the Directors shall elect from among themselves a Chairperson and Vice-Chairperson.

27.2. A Chairperson must have the ability, power and commitment to guide and organize the work of the Board, initiate and monitor strategic decisions and has the know-how and experience to lead the Board.

27.3. The Vice-Chairperson shall act as Chairperson whenever last-named is absent or unable to act as Chairperson, and if both the Chairperson and Vice-Chairperson are absent or unable to carry out the functions of the Chairperson, the Board must elect another Director to be Acting-Chairperson during such absence or incapacity.

27.4. The Chairperson of the Board of the Co-operative shall vacate the office of Chairperson if he—

- (a) Ceases to be a Director of the Co-operative; or
- (b) Resigns as Chairperson; or
- (c) Is relieved of the office of Chairperson by the Board.

27.5. The provisions of [clause 27.2](#) shall be applicable mutatis mutandis to the vice-Chairperson of the Board.

## **28. BOARD MEETINGS AND QUORUM**

28.1. A meeting of the Board must be convened by the Board or the Chairperson of the Board or any two Directors of the Co-operative.

28.2. The majority of Directors shall constitute a quorum of a meeting of the Board.

28.3. Questions arising at a meeting of the Board shall be determined by a majority of the Directors present at the meeting and in the case of an equality of votes, the Chairperson of the Board or the person acting as Chairperson shall have a casting vote in addition to his deliberative vote.

## **29. DISSOLUTION OF THE BOARD**

29.1. Members of the Co-operative may by special resolution, either through a meeting convened by the supervisory committee or at least 25% of the Members if a supervisory committee is not in place, agree to dissolve the Board if such Members find justifiably good reasons that the Board is dysfunctional.

## **30. NON- EXECUTIVE DIRECTORS**

30.1. Members, at their sole discretion, may appoint non-executive independent directors, for the advancement of the objectives of the Co -operative, provided that non-executive independent directors may only be selected from associate Members of the Co-operative.

30.2. Non-executive independent directors do not have voting rights

## **31.SUPERVISORY COMMITTEE**

- 31.1. Members shall appoint a supervisory committee for supervising the Board by representing the interest of its Members between general meetings.
- 31.2. The supervisory committee shall be elected at the first annual general meeting within 18 months from the registration of the Co-operative.
- 31.3. If there is reasonably reliable information that indicates that any act or omission by the Board may impact negatively on the Co-operative or any of its Members, the supervisory committee must call a special meeting of all its Members to discuss such an act or omission.
- 31.4. Within 7 days of such a meeting the supervisory meeting must inform the Tribunal of the outcome of such a meeting as well as the Board and the member or Members affected or concerned of the meetings decision and reasons for the decision.
- 31.5. If the supervisory committee fails to inform the Tribunal of the special meeting and its outcome, a member of the Co-operative may report the matter to the Tribunal for investigation;
- 31.6. In instances where a member request access to information relating to a commercial transaction of the Co-operative and there is reasonable grounds to belief that the disclosure of such information may be to the disadvantage of that Co-operative, the supervisory committee will determine if the Board is entitled to withhold such information from the member.
- 31.7. The Co-operative must, as in the case of general meetings and meetings of the Board, also keep minutes of meetings of the supervisory committee at its offices.

## **32.APPOINTMENT OF THE EXECUTIVE/GENERAL MANAGER AND OTHER MANAGERS BY THE BOARD OF DIRECTORS**

- 32.1. The Board, in consultation with Members, may stipulate the provisions regulating the appointment of a general manager/executive manager and any other manager.
- 32.2. Managers in the Co-operative are responsible for the effective and efficient day to day management of the Co-operative and are accountable to the Board of the Co-operative.

- 32.3. Apart from the management function, managers also have an entrepreneurial function to ensure the relevance and economic growth of the Co-operative by advising the Board accordingly.
- 32.4. Managers should also be responsible for risk management.
- 32.5. Boards may delegate the supervision of employees to the management of the Co-operative.
- 32.6. If the managers are responsible for the employees of the Co-operative, the Board and management shall ensure that performance management and review systems are in place for employees, that employees are trained and that all employment requirements are complied with.
- 32.7. Managers shall agree with the Board on a performance review process to monitor and evaluate their own performance.

## **PART 4 – PROCESSES, PROCEEDINGS, PROVISIONS AND RELATED MATTERS**

### **33. BY-LAWS**

- 33.1. The Board have power to make by-laws provided they are not repugnant to this constitution.
- 33.2. The following by-laws shall be required and shall be ratified by a minimum of 75% of the Members of the Co-operative:
- (a) Conflict resolution mechanism;
  - (b) Division of labour;
  - (c) Remuneration of work;
  - (d) Distribution of profits;
  - (e) Utilization of species (commercial vs own use)
  - (f) Marketing plan
  - (g) Promoting the involvement of women, youth and disabled

### **34. DELEGATION OF POWERS TO A COMMITTEE**

- 34.1. The Board may delegate one or more of its powers to a Director or to a Committee appointed by the Board or Manager of the Co-operative.
- 34.2. Any Director or Committee or Manager so appointed must in the exercise of the powers so delegated, abide by such rules as may be made and follow such instructions as may be issued, in regard thereto, by the Board.

### **35. GENERAL MEETINGS**

- 35.1. A Co-operative must hold:
- (a) Its first annual general meeting within eighteen (18) months of registration of the Co-operative;

- (b) Subsequently annual general meetings within 6 months after the end of the preceding financial year.
- (c) four quarterly meetings per financial year.

35.2. The annual general meeting must:

- (a) Appoint an auditor;
- (b) Approve a report of the Board on the affairs of the Co-operative for the previous financial year;
- (c) Approve the financial statements and auditor's report where applicable for the previous financial year;
- (d) Elect Directors; and
- (e) Decide on the future business of the Co-operative.

### **36. SPECIAL GENERAL MEETINGS**

36.1. The Co-operative may from time to time in addition to its annual general meeting hold Special general meetings of its Members to dispose of any matter relating to its affairs specifically set out in the notice convening the meeting.

### **37. CONVENTION OF MEETINGS**

37.1. An annual general meeting shall be convened on authority of the Board.

37.2. A special general meeting shall be convened—

- (a) by at least two Directors of the Co-operative; or
- (b) by five or more Members of the Co-operative constituting in number at least 20% (twenty percent) of all the Members of the Co-operative: Provided that such Members shall not be entitled to convene an special general meeting unless they have beforehand in writing petitioned the Directors to convene such a meeting and the meeting is not convened within 21 (twenty one) days reckoned from the date the petition was lodged, or unless for any reason there are no Directors to whom such a petition can be addressed.

- 37.3. Any meeting convened in terms of [sub-clause 37.2](#) by the petitionists shall, as far as possible, be convened and held in the same manner as is prescribed for meetings convened and held by the Board and any reasonable expense incurred by the petitionists in securing the names and addresses of Members, in sending notices of the meeting to them and hiring accommodation for the holding of the meeting if so resolved by such meeting, be refunded to the petitionists by the Co-operative.

### **38. NOTICE OF GENERAL MEETING**

- 38.1. A general meeting shall be convened by at least fourteen (14) days' notice in writing to each member of the Co-operative.
- 38.2. The notice convening the meeting shall in addition to the time and place of the meeting state the purpose for which it is convened.
- 38.3. A notice may be delivered personally, forwarded by post to the member at his registered address, emailed to a registered email address of the member or faxed to the registered fax number of the member.
- 38.4. Non-receipt by a member of a notice of a general meeting of the Co-operative does not render such meeting invalid.
- 38.5. If a notice of a meeting is returned to the Co-operative because the member to whom it was sent is no longer resident at the registered address, the email address, fax number, or SMS number does not exist or does not function, the Co-operative shall be relieved of its obligation to send further notices of meetings to the member concerned unless the member makes an appearance and requests that such notices be sent to his new address.

### **39. QUORUMS**

- 39.1. A quorum for a general meeting shall be constituted by more than 50% of the Members being present.

- 39.2. No item of business shall be transacted at any general meeting unless a quorum of Members is present during the time when the meeting is considering that item.
- 39.3. If within one hour from the time appointed for the meeting a quorum is not present, the meeting—
- (a) if convened by Members or in consequence of a petition of Members, must be cancelled;
  - (b) if otherwise convened, must be adjourned to the same day in the next week at the same time and place, or if that day is a public holiday, to the next day following which is not a public holiday.
- 39.4. If the same hall or building is not available for an adjourned meeting it may be held at another venue within convenient distance if Members are advised of the change of venue either by notice posted at the original venue or by some other means.
- 39.5. If a quorum is not present within one hour after the time fixed for an adjourned meeting, the Members present, provided they are not less than five in number, shall be deemed to constitute a quorum: Provided that a special resolution may not be passed by such a meeting.

#### **40. CHAIRPERSON OF GENERAL MEETINGS**

- 40.1. The Chairperson of the Board or in his absence the Vice-Chairperson or in the absence of both, another Director elected by the meeting shall act as Chairperson of an annual general meeting or a special general meeting convened in terms of [clauses 35 and 36](#).
- 40.2. A person elected by the meeting shall act as the Chairperson of a special general meeting convened in terms of [clause 36.1](#) of this constitution.

## **41.VOTING BY MEMBERS**

- 41.1. At all meetings of the Co-operative, each member shall have one vote.
- 41.2. Any matter for decision by a general meeting shall be decided by means of a vote on a show of hands or by ballot.
- 41.3. A vote by ballot shall not be held unless it is demanded by at least five Members present at the meeting and entitled to vote in a vote by ballot.
- 41.4. A vote by ballot must be held in such manner as the Chairperson stipulates. Scrutineers must be nominated to determine the result of the vote that must be declared by the Chairperson of the meeting as the resolution of the meeting.
- 41.5. A declaration by the Chairperson that a resolution has, on a show of hands or by ballot, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the meeting, shall be conclusive, proof thereof, without evidence as to the number or proportion of votes recorded for or against such resolution.
- 41.6. If no objection is raised in terms of the provisions of this constitution against the validity of any vote cast at the meeting, whether on a show of hands or by ballot, every vote cast at the meeting that has not been disallowed shall for all purposes be deemed to be valid.
- 41.7. In the case of an equality of votes, whether on a show of hands or in a vote by ballot, the Chairperson of the meeting shall have a casting vote in addition to his deliberative vote.
- 41.8. Every matter submitted to a general meeting for resolution, except for a matter requiring a special resolution, shall be determined by a majority of votes recorded at the meeting.

## **42. SPECIAL RESOLUTION**

42.1. A resolution by a general meeting of the Co-operative shall, constitute a special resolution if—

- (a) the notice by which the general meeting was convened specified particulars of the proposed resolution and stated the intention to propose same as a special resolution; and
- (b) the resolution has been passed by not less than two thirds of the Members present, both in a vote on the show of hands and a vote by ballot.
- (c) the resolution related to the winding-up of the Co-operative and was passed by at least (seventy-five percent (75%) of the votes of all the Members of the Co-operative, both in a vote on the show of hands and a vote by ballot.

## PART 5 – FINANCE AND RELATED MATTERS

### 43.RESTRICTIONS RELATING TO UNSECURED MEMBERS LOANS

- 43.1. The Co-operative shall not borrow or raise money or overdraw a banking account except on authority of a special resolution: Provided that the Co-operative may borrow or raise money or overdraw a banking account without the said authority up to an amount not exceeding one half of the aggregate of its share capital and general reserve.
- 43.2. The Board may, if so authorised by Members in terms of [sub-clause 43.1](#) above, in addition to the loans secured by some or all of the assets of the Co-operative, the issue of secured debentures and loans obtained from the commercial banks or any other financial institution, further raise loans from Members subject to the following conditions:
- (a) No loan from any individual member shall amount to less than R1 000 (one thousand rand) and, for the purpose of this paragraph, every successive loan from any particular member shall be regarded as a separate loan;
  - (b) No loan shall be repaid within twelve (12) months after receipt;
  - (c) Interest shall be paid on loans at a rate per annum to be determined by the Board from time to time;
  - (d) An acknowledgement of debt shall be issued in respect of each loan.
  - (e) The acknowledgement of debt shall be freely transferable by means of a cession duly registered by the Co-operative.
  - (f) Receipt of each loan shall be acknowledged by the following acknowledgment of debt, which shall incorporate either of the conditions (ii) or (iii) mentioned below—

#### 44. ACKNOWLEDGEMENT OF DEBT

We, the undersigned, directors and secretary of the ..... (**KGORONG AGRICULTURAL CO-OPERATIVE LIMITED**) hereinafter called the Co-operative, hereby acknowledge having received the sum of R..... (.....Rand) from..... (name) of .....(address) hereinafter called the owner, subject to the conditions—

- (a) Interest at the rate of ....% (..... percent) per annum or such rate as the Board may determine from time to time, shall be payable to the owner on ..... or at the date of repayment.
- (b) The owner shall not have the right to demand repayment, but the Co-operative, after having had the loan for not less than 12 (twelve) months, may repay such loan at any time after having given not less than 30 (thirty) days notice of its intention to repay such loan.

OR

- (c) The loan shall be repayable on the ..... day of ..... 20..... (which may not be less than 12 (twelve) months from the date of this acknowledgement of debt): Provided that the Board of the Co-operative may defer the repayment if the circumstances of the Co-operative at the date of repayment of the loan, render such deferment necessary: Provided further that the Board of the Co-operative shall submit for confirmation to the first succeeding general meeting of Members its resolution to defer repayment of a loan and if the resolution of the Board is not confirmed by that meeting of the Co-operative, the loan shall be repaid within 7 (seven) days of the date of such meeting.

Dated at ..... this ..... day of ..... 20.....

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DIRECTOR

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DIRECTOR

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SECRETARY

## **45. BANKING ACCOUNT**

- 45.1. The Co-operative must open a banking account in the name of the Co-operative in which all moneys received shall be deposited as soon as possible after receipt thereof.

## **46. FINANCIAL YEAR**

- 46.1. The financial year of the Co-operative shall end on the last day of **February** of each year.

## **47. FINANCIAL RECORDS**

- 47.1. The Co-operative must keep, such accounting records as are necessary fairly to reflect the state of affairs and business of the Co-operative and to explain the transactions and financial position of the business of the Co-operative.
- 47.2. The accounting records shall be kept at the registered office of the Co-operative and shall be available at all times for examination by the Directors.

## **48. ANNUAL FINANCIAL STATEMENTS**

- 48.1. An audit of the affairs of the Co-operative must be conducted annually in respect of each financial year in order to—
- (a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;
  - (b) verify that the Co-operative has maintained adequate records in accordance with the requirements of this constitution and the Act;
  - (c) report generally as to whether the assets and facilities of the Co-operative are being properly managed and the operations of the Co-operative are being conducted in accordance with Co-operative principles; and
  - (d) report on any other matter the auditors are required to report on in terms the constitution.

48.2. The provisions of [clause 48.1](#) are applicable to the annual financial statements of the Co-operative and its company subsidiaries.

## **49. AUDIT**

49.1. The Members must appoint an auditor at each annual general meeting, to hold office until the close of the next annual general meeting. The duties of the auditor are outlined in [clause 48.1](#).

## **50. SURPLUS**

50.1. The surplus resulting from the operations of the Co-operative during any financial year shall be applied by resolution of the annual general meeting for that year:

Provided that—

- (a) in accordance with section 3(1)/ of the Act, at least 5% (five percent) is set aside as a reserve in the Indivisible Reserve Fund and is not divisible amongst the Members, unless the Co-operative winds-up;
- (b) the amount which is set aside as a General Reserve Fund shall not be less than the amount determined by the Board.
- (c) the amount which is available out of the surplus for distribution to Members shall be applied in accordance with the provisions of [clause 51.1](#).
- (d) Co-operatives are required to put at least a percentage of the surplus in an indivisible reserve.
- (e) The indivisible reserve is indivisible amongst Members. The indivisible reserve must not be less
- (f) than 1% or more than 5% of the net asset value as reflected in the most recent audited report,
- (g) independently reviewed report or annual report

## **51. PAYMENT OF BONUS**

51.1. The amount mentioned in [clause 50.11](#) must, be allocated to Members according to the patronage proportion and the amount allocated to a member must by resolution of Members at the annual general meeting, be applied in one or more of the following ways—

(a) by paying it out either wholly or partly in cash;

(b) by utilising it for buying of fully paid-up Members shares:

- i. provided that an amount accruing to a member which is insufficient to fully pay up a share may be applied, by resolution of the Board, in accordance with the provisions of paragraphs (a) or (c) of this clause;
- ii. provided that notice will be given to each member of the number of shares purchased for the member;
- iii. provided that such shares will be either issued or transferred in terms of clauses 12 and 15, by resolution of the Board; and
- iv. provided that share certificates will be issued and forwarded to Members.

(c) by setting it aside in the Deferred Bonus Payment Fund for future payment to Members.

51.2. Interest on share capital or bonus declared payable to Members, except amounts transferred to the Deferred Bonus Payment Fund, does not earn interest from the Co-operative.

51.3. Any interest on share capital or any bonus remaining unclaimed for a period of 3 (three) years from the date on which such interest or bonus was declared payable may, by resolution of the Board, be declared forfeit and added to the general reserve of the Co-operative.

## **52. DEFERRED BONUS PAYMENT FUND**

52.1. All amounts transferred to the “Deferred Bonus Payment Fund” in terms of [clause 51.11](#) shall be credited in the respective names of the Members in the books of the Co-operative.

52.2. The Deferred Bonus Payment Fund may be invested separately or may be used by the Co-operative to carry out any of its objects:

Provided that the fund must not be utilised to defray any loss resulting from the operations of the Co-operative.

52.3. The interests of Members and former Members in the Deferred Bonus Payment Fund must be repaid to them in the following circumstances and subject to the conditions mentioned, i.e.—

- (a) When the fund has been functioning for five years, the interests built up by Members and former Members during the first year of the fund shall be repaid to those concerned; the following year the interests built up during the second year of the fund shall be refunded, et seq.;
- (b) on the death of a member or former member the interest of the deceased in the fund shall be paid to his estate;
- (c) when Membership in the Co-operative is terminated in any other way, the interest of the member concerned in the fund shall be repaid to him as it becomes repayable in terms of paragraphs [a] or [b] of this subclause:

Provided that the Board may authorise payment at an earlier date if the Co-operative is in a position financially to do so: Provided further that the interest of a former member in this fund shall not be retained in the fund for more than three years after termination of Membership of the former member.

52.4. The amounts payable to a member or former member in terms of this clause shall be applied in payment or part payment of any amount due to the Co-operative by such member or former member.

52.5. A member's or former member's credit in the fund may be transferred to someone else only with the approval of the Board:

Provided that no such transfer shall be approved unless the transferee is a member of the Co-operative.

52.6. Any amount to the credit of a member or former member in the Deferred Bonus Payment Fund remaining unclaimed for a period of 3 (three) years from the date it becomes payable to him may by resolution of the Board be declared forfeit and transferred to the general reserve of the Co-operative:

Provided that such a transfer shall not be made unless the member or former member concerned has first been warned of the proposed transfer by means of a notice sent to his last address, as entered in the register of Members and he has been given an opportunity of at least six months to claim the amount.

## PART 6 - ADMINISTRATION

### 53.RECORD KEEPING BY CO-OPERATIVE AND ACCESS TO INFORMATION

53.1. The Co-operative must keep at its offices the following:

- (a) Its constitution, including any amendments thereto.
- (b) The minutes of general meetings in a Minute Book.
- (c) The minutes of meetings of the Board in a Minute Book.
- (d) A LIST OF MEMBERS / REGISTER OF MEMBERS setting out—
  - (ii) the name and address of each member.
  - (iii) the date on which each member became a member.
  - (iv) if applicable, the date on which a person's Membership was terminated.
  - (v) the amount of any Membership fees paid.
- (e) **A REGISTER OF DIRECTORS** setting out—
  - (ii) the name, address and identity number of each director, including former directors.
  - (iii) the date on which such directors became or ceased to be directors.
  - (iv) the name and address of any other Co-operative, company or close corporation where both present and former directors are, or were, directors or Members.
- (f) **A REGISTER OF DIRECTOR'S INTEREST** in contracts or undertakings.
- (g) Adequate accounting records, including records reflecting the transactions between each member and the Co-operative for the purpose of calculating the patronage proportion.

53.2. The Co-operative must retain its accounting records—

- (a) for a period of five years after the end of the financial year to which they relate, in the case its main object involves its Members conducting transactions with it.
- (b) for a period of three years after the end of the financial year to which they relate, in the case its main object does not involve its Members conducting transactions with it.

- 53.3. Subject to [clause 53.4](#) hereunder, Members of the Co-operative may examine the records referred to in [clause 53.1](#) above during normal business hours of the Co-operative and may make copies thereof after payment of a fee.
- 53.4. Subject to the Promotion of Access to Information Act, 2000, the Board may, for a reasonable period of time, refuse information relating to any commercial transaction of the Co-operative if there are reasonable grounds to believe that the disclosure may be to the disadvantage of the Co-operative.
- 53.5. Where the constitution of a Co-operative provides for the establishment of a supervisory committee, the supervisory committee must determine whether the Board is entitled to withhold information in terms of [clause 53.4](#) above.

#### **54.ANNUAL SUBMISSION OF MEMBER INFORMATION TO THE REGISTRAR**

- 54.1. The annual return on Membership and Membership contributions needs to be provided as required in terms of the Regulations and must be submitted to CIPC as specified.

#### **55.AMENDMENT OF CONSTITUTION**

- 55.1. The constitution of the Co-operative may be amended by special resolution only and must adhere to sectoral constitution template as specified in the Regulations, as applicable.
- 55.2. A Co-operative may amend its constitution if a proposed amendment to the constitution is approved by the annual general meeting or by special resolution at a general meeting.

#### **56.LIQUIDATION**

- 56.1. In case of liquidation the patronage proportion must be determined for either five (5) years, which preceded the commencement of the winding-up of the Co-operative, or the period for which the Co-operative has existed, whichever period is the shorter.

NOTE: This page must be signed by ALL Members.

[illegible]

